



PATENT APPLICATION  
Attorney's Do. No. 8514-100 (ST-A14)

2162  
#4/Revocation  
J. Myhre  
3/29/02

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

NED HOFFMAN et al.

Serial No. 09/215,058

Group Art Unit: 2162

Filed: December 17, 1998

Examiner: James W. Myhre

Confirmation No. 7856

For: TOKENLESS FINANCIAL ACCESS SYSTEM

Assistant Commissioner for Patents  
Washington, D.C. 20231

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Technology Center 2100

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO:

☐ COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON D.C. 20231

☒ ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON D.C. 20231

☐ ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON VA 22202-3513

ON: 14 March 2002  
*[Signature]*

POWER OF ATTORNEY BY ASSIGNEE OF ENTIRE INTEREST  
AND REVOCATION OF PRIOR POWERS

I, MICHAEL J. BIBER, Vice President of Indivos Corporation, a Delaware corporation, formerly known as VeriStar Corporation, formerly known as SmartTouch, Inc., having a place of business at 155 Grand Avenue, Suite 1050, Oakland CA 94612, assignee of the entire right, title and interest, by assignment (copy enclosed) to SmartTouch, Inc., represent that I am empowered to sign on behalf of assignee.

As assignee of record of the entire interest of the above-identified application, all powers of attorney previously given are hereby revoked and the following attorneys and/or patent agents are hereby appointed to prosecute and transact all business in the Patent and Trademark Office connected therewith:

PATENT & TRADEMARK OFFICE



020575



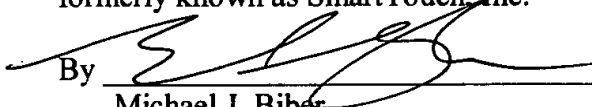
<u>Attorney Name</u>	<u>Registration No.</u>
Jerome S. Marger	26,480
Alexander C. Johnson, Jr.	29,396
Alan T. McCollom	28,881
James G. Stewart	32,496
Stephen S. Ford	35,139
Julie L. Reed	35,349
Walter D. Fields	37,130
Gregory T. Kavounas	37,862
Scott A. Schaffer	38,610
Joseph S. Makuch	39,286
James E. Harris	40,013
Kevin S. Ross	42,116
Graciela G. Cowger	42,444
Ariel Rogson	43,054
Craig R. Rogers	43,888
Kurt M. Rylander	43,897
Hillary Brooks	45,815
Clifford D. Weston	48,307

Direct all telephone calls to Alexander C. Johnson, Jr. at (503) 222-3613 and send all correspondence to:

Marger Johnson & McCollom, P.C.  
1030 S.W. Morrison Street  
Portland, Oregon 97205

INDIVOS CORPORATION,  
a Delaware corporation,  
formerly known as VeriStar Corporation,  
formerly known as SmartTouch, Inc.

By

  
Michael J. Biber  
Vice President

Dated: March 12, 2002



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application:

NED HOFFMAN; DAVID FERRIN PARE, JR.;  
PHILIP DEAN LAPSLEY and  
JONATHAN ALEXANDER LEE

Serial No. 09/215,058

Filed: December 17, 1998

For: TOKENLESS FINANCIAL ACCESS SYSTEM

Box Assignment  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231

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☐ ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON D.C. 20231

☐ ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON, VA 22202-6513

ON: 14 March 2002

*[Signature]*

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest: (1) NED HOFFMAN, 977 Daniel Street, Sebastopol, California 95472; (2) DAVID FERRIN PARE, JR., 1430 Josephine Street, Apt. R7, Berkeley, California 94703; (3) PHILIP DEAN LAPSLEY, 18 Russell Road, Newton, Massachusetts 02458; (4) JONATHAN ALEXANDER LEE, 6116 Telegraph Avenue, Oakland, California 94609.

2. Name and address of party(ies) receiving an interest: SMARTTOUCH, INC., a Delaware corporation, 727 Allston Way, Berkeley, California 94710

3. Description of the interest conveyed: Assignment

Date of execution of attached document: (1) December 17, 1998; (2) December 17, 1998; (3) December 17, 1998; (4) December 17, 1998.

4. Application number: 09/215,058 Additional sheet attached? No

5. Name and address of party to whom correspondence concerning document should be mailed:

Alexander C. Johnson, Jr.  
MARGER JOHNSON & McCOLLOM, P.C.  
1030 S.W. Morrison Street  
Portland, Oregon 97205

Telephone: (503) 222-3613

6. Number of applications and patents involved: 1

7. The attached Certificate and Transmittal sheet shows PTO receipt for \$40 paid 01/04/99 to record this assignment.

8. Any deficiency or overpayment should be charged or credited to deposit account number 13-1703.

9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

Dated: 14 Mar 2002

By *[Signature]*  
Alexander C. Johnson, Jr.  
Registration No. 29,396

MARGER JOHNSON & McCOLLOM, P.C.  
1030 S.W. Morrison Street  
Portland, Oregon 97205  
Telephone: (503) 222-3613

cc: Michael J. Biber, Esq.

Total number of pages comprising cover sheet and attached assignment: 4

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3-18-99

This attached "3.73"  
letter cannot be used  
for recording.

Complete the attached  
"recording form cover  
sheet & resubmit.

Return all pages because  
the fees & mailroom date  
are affixed to this page.

Thank You

I could not find a telephone  
number for you to advise  
you on this matter. <sup>Mrs.</sup> Russele



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CERTIFICATE UNDER 37 CFR 3.73(d)

Applicants: Hoffman et.al

Application No.: \_\_\_\_\_ Filed: \_\_\_\_\_

Entitled: TOKENLESS FINANCIAL ACCESS SYSTEM

SMARTTOUCH, Inc., a Corporation,  
(name of assignee)

certifies that is the assignee of the entire right, title and interest in the patent application identified above by virtue of either:

[X] An assignment from the inventor(s) of the patent application identified above. The assignment was recorded in the Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

OR

[ ] A chain of title from the inventor(s), of the patent application identified above, to the current assignee as shown below:

1. From \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, for which a copy thereof is attached.

2. From \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, for which a copy thereof is attached.

3. From \_\_\_\_\_ To: \_\_\_\_\_

The document was recorded in the Patent and Trademark Office at  
Reel \_\_\_\_\_, Frame \_\_\_\_\_, for which a copy thereof is attached.

The undersigned has reviewed all the documents in the chain of title of the patent application identified above and, to the best of undersigned's knowledge and belief, title is in the assignee identified above.

The undersigned (whose title is supplied below) is empowered to act on behalf of the assignee.

I hereby declare that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and further, that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

01/04/1999 JARTIS

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03 FC:581

Date: 12/17/98

40.00 UP

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Signature: [Signature]  
Name: Ned Hoffman

Title: Vice President  
SmartTouch, Inc.



No cover sheet

40

6. ☒ Small Entity Statement - verified statement enclosed.

50% Filing Fee Reduction (if applicable) \$ 395.

7. ☒ Other Fees

☒ Recording Assignment [\$40.00] \$ 40.00

☐ Other fees

Specify \_\_\_\_\_ \$ \_\_\_\_\_

Total Fees Enclosed . . . . . \$ 435.

8. Payment of Fees

☒ Check(s) in the amount of \$ 435., is enclosed.

☐ Charge Account No. \_\_\_\_\_ in the amount of \$\_. A duplicate of this transmittal is attached.

9. ☒ The Commissioner is hereby authorized to charge any additional fees (or credit any overpayment) associated with this communication and which may be required under 37 CFR 1.16 or 1.17 to Deposit Account No. 19-3800. A duplicate sheet is attached.

10. ☐ Information Disclosure Statement

11. ☒ Return Receipt Postcard

12. ☒ Other: Specify Certification Under 37 CFR 3.73(b)

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By: \_\_\_\_\_

Name: Ali Kamarei

Registration No. 37,000

Dated: \_\_\_\_\_

12/17/98

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ASSIGNMENT

WHEREAS, We, Ned Hoffman, David Ferrin Pare, Jr., Philip Dean Lapsley, and Jonathan Alexander Lee, hereinafter referred to as "ASSIGNOR", have invented certain new and useful improvements as described and set forth in the below-identified application for United States Letters Patent:

Title of Invention: TOKENLESS FINANCIAL ACCESS SYSTEM

Filing Date: \_\_\_\_\_ Serial No.: \_\_\_\_\_

WHEREAS, SMARTTOUCH, Inc., 46 Shattuck Square, Suite 12, Berkeley, California 94704, a corporation of the State of California, hereinafter referred to as "ASSIGNEE", is desirous of acquiring the entire right, title and interest in the said invention and application and in any Letters Patent which may be granted on the same;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that, for and in consideration of the sum of One Dollar (\$1.00) lawful money paid to Assignor by Assignee, receipt of which is hereby acknowledged, Assignor have sold, assigned and transferred, and by these presents does sell, assign and transfer unto said Assignee, and Assignee's successors and assigns, all right, title and interest in and to the said invention, said application for United States Letters Patent, and any Letters Patent which may hereafter be granted on the same in the United States and all countries throughout the world including any divisions, renewals, continuations in whole or in part, substitutions, conversions, reissues, prolongations or extensions thereof, the said interest to be held and enjoyed by said Assignee as fully and exclusively as it would have been held and enjoyed by said Assignor had this assignment and transfer not been made, to the full end and term of any Letters Patent.

Assignor further agrees that he will, without charge to said Assignee, but at Assignee's expense, cooperate with Assignee in the prosecution of said application and/or applications, execute, verify, acknowledge and deliver all such further papers, including applications for Letters Patent and for the reissue thereof, and instruments of assignment and transfer thereof, and will perform such other acts as Assignee lawfully may request, to obtain or maintain Letters Patent for said invention and improvement in any and all countries, and to vest title thereto in said Assignee, or Assignee's successors and assigns.

IN TESTIMONY WHEREOF, Assignor has hereunto signed his name to this assignment on the date indicated below.

Date: 12/17/98

Jonathan Alexander Lee  
Jonathan Alexander Lee

STATE of: CALIFORNIA )  
COUNTY of: ALAMEDA )

On this \_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_\_, before me, the undersigned notary public, personally appeared the above-named assignor, known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

\_\_\_\_\_  
Notary Public

SEAL

IN TESTIMONY WHEREOF, Assignor has hereunto signed his name to this assignment on the dates indicated below.

Date: 12/17/28

David Ferrin Pare, Jr.  
David Ferrin Pare, Jr.

STATE OF CALIFORNIA )  
COUNTY OF ALAMEDA )

On this \_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_, before me, the undersigned notary public, personally appeared the above-named assignor, known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

\_\_\_\_\_  
Notary Public

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IN TESTIMONY WHEREOF, Assignor has hereunto signed his name to this assignment on the dates indicated below.

Date: 12/17/98



Ned Hoffman

STATE OF CALIFORNIA )

COUNTY OF ALAMEDA )

On this \_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_, before me, the undersigned notary public, personally appeared the above-named assignor, known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

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\_\_\_\_\_  
Notary Public

SEAL

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IN TESTIMONY WHEREOF, Assignor has hereunto signed his name to this assignment on  
the dates indicated below.

Date: 12/17/98

Philip D. Lapsley  
Philip Dean Lapsley

STATE OF CALIFORNIA )

COUNTY OF ALAMEDA )

On this \_\_\_\_ day of \_\_\_\_\_, in the year of \_\_\_\_, before me, the undersigned notary  
public, personally appeared the above-named assignor, known to me (or proved to me on the basis of  
satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and  
acknowledged that they executed the same.

**COPY OF ORIGINAL  
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Notary Public

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application:

NED HOFFMAN; DAVID FERRIN PARE, JR.;  
PHILIP DEAN LAPSLEY and  
JONATHAN ALEXANDER LEE

Serial No. 09/215,058

Filed: December 17, 1998

For: TOKENLESS FINANCIAL ACCESS SYSTEM

Box Assignment  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231



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I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO:

☒ COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON D.C. 20231

☐ ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON D.C. 20231

☐ ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON VA 22202-3513

ON: 14 Mar 2002  
*[Signature]*

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest: SMARTTOUCH, INC., a Delaware corporation, 727 Allston Way, Berkeley, California 94710
2. Name and address of party(ies) receiving an interest: VERISTAR CORPORATION, a Delaware corporation, 155 Grand Avenue, Suite 1050, Oakland CA 94612

3. Description of the interest conveyed: Name Change

Date of execution of attached document: July 10, 2000

4. Application number: 09/215,058 Additional sheet attached? No

5. Name and address of party to whom correspondence concerning document should be mailed:

Alexander C. Johnson, Jr.  
MARGER JOHNSON & McCOLLOM, P.C.  
1030 S.W. Morrison Street  
Portland, Oregon 97205

Telephone: (503) 222-3613

6. Number of applications and patents involved: 1

7. Attached is PTO Form 2038 authorizing credit card payment of \$40 recordal fee.

8. Any deficiency or overpayment should be charged or credited to deposit account number 13-1703.

9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

By

*[Signature]*  
Alexander C. Johnson, Jr.  
Registration No. 29,396

Dated: 14 Mar 2002

MARGER JOHNSON & McCOLLOM, P.C.  
1030 S.W. Morrison Street  
Portland, Oregon 97205  
Telephone: (503) 222-3613

cc: Michael J. Biber, Esq.

Total number of pages comprising cover sheet and attached assignment: 21

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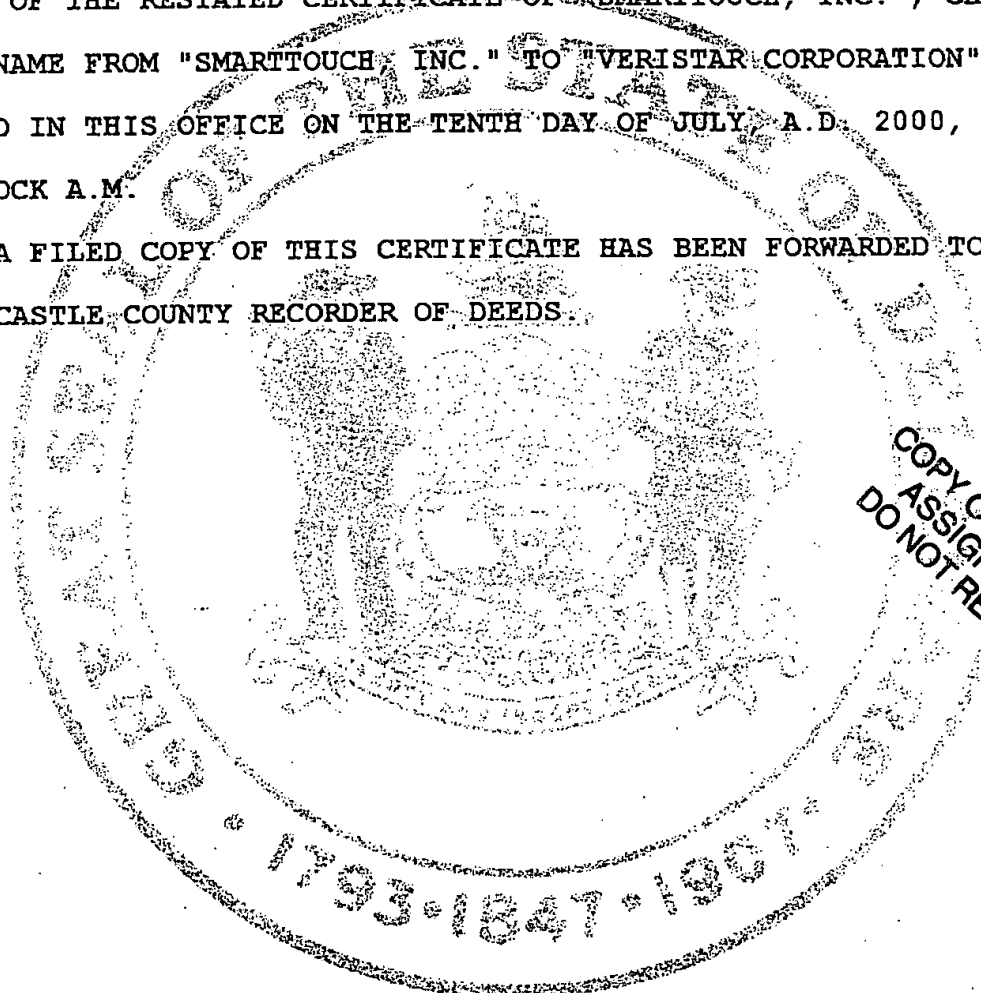


State of Delaware  
Office of the Secretary of State

PAGE 1

I, EDWARD J. FREEL, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "SMARTTOUCH, INC.", CHANGING ITS NAME FROM "SMARTTOUCH, INC." TO "VERISTAR CORPORATION", FILED IN THIS OFFICE ON THE TENTH DAY OF JULY, A.D. 2000, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



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*Edward J. Freel*

Edward J. Freel, Secretary of State

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001347851

AUTHENTICATION: 0548860

DATE: 07-10-00

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
SMARTTOUCH, INC.**

The undersigned, Philip J. Gioia, hereby certifies that:

1. He is the duly elected and acting President and Chief Executive Officer of SmartTouch, Inc., a Delaware corporation.
2. The Certificate of Incorporation of this corporation was originally filed with the Secretary of State of Delaware on March 20, 1997.
3. The Amended and Restated Certificate of Incorporation of this corporation shall be amended and restated to read in full as follows:

**ARTICLE I**

The name of this corporation is VeriStar Corporation (the "Corporation").

**ARTICLE II**

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street in the City of Wilmington, County of New Castle, Delaware. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE III**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the Delaware General Corporation Law.

**ARTICLE IV**

**A. Classes of Stock.** This Corporation is authorized to issue two classes of shares of stock, to be designated Common and Preferred, respectively. This Corporation is authorized to issue TWENTY-FIVE MILLION (25,000,000) shares of Common Stock and FIFTEEN MILLION

FIVE HUNDRED THOUSAND (15,500,000) shares of Preferred Stock. The shares of Preferred Stock may be issued from time to time in series. The par value of Common Stock and Preferred Stock is \$0.0005 per share. FOUR MILLION SEVEN HUNDRED TWENTY SEVEN THOUSAND NINE HUNDRED TWENTY SEVEN (4,727,927) shares of Preferred Stock shall be designated "Series A Preferred Stock" (the "Series A Preferred Stock"). SIX MILLION ONE HUNDRED EIGHTY SEVEN THOUSAND SEVEN HUNDRED NINETY (6,187,790) shares of Preferred Stock shall be designated "Series B Preferred Stock" and FOUR MILLION FIVE HUNDRED EIGHTY FOUR THOUSAND TWO HUNDRED EIGHTY THREE (4,584,283) shares of Preferred Stock shall be designated "Series C Preferred Stock" and together with the Series B Preferred Stock, the "Series B-C Preferred Stock". The rights, preferences, privileges, and restrictions granted to and imposed on the Series A Preferred Stock and the Series B-C Preferred Stock are as set forth below in this Article IV.

B. Rights, Preferences and Restrictions of Series A Preferred Stock and Series B-C Preferred Stock.

1. Dividend Rights

(a) The holders of Series A Preferred Stock (the "Series A Preferred Stockholders") and the holders of the Series B-C Preferred Stock (the "Series B-C Preferred Stockholders") shall be entitled to receive, when and if declared by the Board of Directors, noncumulative cash dividends out of any assets of the Corporation at the time legally available therefor, prior and in preference to the holders of the Common Stock (the "Common Stockholders"), at the annual rate of 2/10th of One Cent (\$0.002) per share on each outstanding share of Series A and Series B-C Preferred Stock, in each case as appropriately adjusted for stock dividends, subdivisions, split-ups, or combinations and similar events as provided herein.

(b) So long as any shares of Series A and Series B-C Preferred Stock shall be outstanding, no dividend, whether in cash or property, shall be paid or declared, nor shall any other distribution be made, on any shares of Common Stock, nor shall any shares of Common Stock of this Corporation be purchased, redeemed or otherwise acquired for value by the Corporation until all dividends on the Series A and the Series B-C Preferred Stock shall have been paid or declared and set aside for payment as set forth in section 1(a) above.

(c) If, after payment to the Series A and the Series B-C Preferred Stockholders of the full dividend set forth in section 1(a) above during any fiscal year of the Corporation, any dividend is declared and paid on any share of Common Stock, an additional dividend shall be paid to the Series A Preferred Stockholders and the Series B-C Preferred Stockholders of any assets of the Corporation at the time legally available therefor, in an amount per share of the applicable series of Preferred Stock as would be payable on the number of shares of Common Stock into which each such share of Preferred Stock could be converted as of the record date fixed for the determination of the holders of the Common Stock entitled to receive such dividend, such per share dividend amounts being pari passu as among the Common Stockholders, holders of the Series A and the Series B-C Preferred Stockholders. Such dividends shall be payable only when and if declared by the Board of Directors and shall be noncumulative.

(d) The provisions of sections 1(a), 1(b) and 1(c) hereof shall not restrict the Corporation from making (i) any dividend payable in shares of Common Stock, or (ii) any distributions in connection with the repurchase at or below the purchase price (or such other price as may be unanimously agreed to by the Board of Directors) of shares of Common Stock issued to or held by officers, directors or employees of, or consultants, advisers and others who provide services to, this Corporation or its subsidiaries ("Compensatory Stock") upon termination of such employment or services relationship pursuant to plans, agreements or arrangements (whether now existing or hereafter entered into) providing for the right of said repurchase between the Corporation and such persons ("Compensatory Stock Repurchase Rights") or in exercise of the Corporation's right of first refusal upon a proposed transfer of shares. Each Series A and Series B-C Preferred Stockholder shall be deemed to have consented, for purposes of Sections 502, 503 and 506 of the California Corporations Code, to distributions made by this Corporation in connection with the repurchase of Compensatory Shares.

2. Redemption. The Series A Preferred Stock and the Series B-C Preferred Stock are not redeemable.

3. Voting Rights.

(a) The Series A Preferred Stockholders and the Series B-C Preferred Stockholders shall have the right to one vote for each share of Common Stock into which such Preferred Stock could then be converted, and with respect to such vote, such holder shall have full voting rights and powers equal to the voting rights and powers of the Common Stockholders, and shall be entitled, notwithstanding any provision hereof, to notice of any stockholders' meeting in accordance with the bylaws of the Corporation ("Bylaws"), and shall be entitled to vote, together with Common Stockholders, with respect to any question upon which Common Stockholders have the right to vote. Fractional votes shall not, however, be permitted and any fractional voting rights available on an as-converted basis (after aggregating all shares into which shares of Series A Preferred Stock and Series B-C Preferred Stock held by each stockholder could be converted) shall be rounded to the nearest whole number (with one-half being rounded upward).

(b) Notwithstanding section 3(a) above, the Board of Directors will be elected as follows:

(i) the Series B Preferred Stockholders shall be entitled, voting as a separate class, to elect one (1) director, *provided that* the outstanding Series B stock continues to represent at least ten percent (10%) of the outstanding share capital of the Company on an as converted fully diluted basis;

(ii) the Series C Preferred Stockholders shall be entitled, voting as a separate class, to elect one (1) director, *provided that* the outstanding Series C stock continues to represent at least ten percent (10%) of the outstanding share capital of the Company on an as converted fully diluted basis;

(iii) the Series A and the Common Stockholders shall be entitled, voting as a separate class, to elect four (4) directors; and

notwithstanding any provisions of the Bylaws to the contrary, the stockholders entitled to elect a particular director pursuant to subparagraphs (i), (ii) or (iii) of this section 3(b) shall be entitled to remove such director or to fill a vacancy in the seat formerly held by such director, by a separate class vote of such stockholders and otherwise in accordance with the applicable provisions of the General Corporation Law of the State of Delaware.

4. No Fractional Shares. No fractional shares shall be issued upon conversion of shares of Series A Preferred Stock or Series B-C Preferred Stock. Whether or not fractional shares would be issuable upon such conversion shall be determined on the basis of the total number of shares of Series A Preferred Stock or Series B-C Preferred Stock the holder is at the time converting into Common Stock and the number of shares of Common Stock issuable upon such aggregate conversion. If the conversion would result in any fractional share, the Corporation shall, in lieu of issuing any fractional share, pay the holder an amount in cash equal to the fair market value of such fractional share on the date of conversion (as determined in good faith by the Board of Directors).

5. Notices of Record Date. In the event of any taking by the Corporation of a record of the holders of any class of securities for the purpose of determining the holders thereof who are entitled to receive any dividend (other than a cash dividend) or other distribution, any right to subscribe for, purchase or otherwise acquire any shares of stock of any class or any other securities or property, or to receive any other right, the Corporation will dispatch to each Series A Preferred Stock and Series B-C Preferred Stockholder at least ten (10) days prior to the date specified therein, a notice specifying the date on which any such record is to be taken for the purpose of such dividend, distribution or rights, and the amount and character of such dividend, distribution or right.

6. Other Notices. Except as otherwise provided herein, any notices required by the provisions of this Certificate to be given to the Series A Preferred Stockholders or Series B-C Preferred Stockholders must be in writing and will be deemed given upon personal delivery, one day after deposit with a reputable overnight courier service for overnight delivery or after transmission by facsimile telecopier with confirmation of successful transmission, or three business days after deposit in the United States mail, by registered or certified mail postage prepaid, or upon actual receipt if given by any other method, addressed to each holder of such record at his address appearing on the books of the Corporation.

### C. Rights, Preferences and Restrictions of Series A Preferred Stock

#### 1. Preference on Liquidation

(a) Preference Price. For purposes hereof, the "Original Purchase Price of the Series A Preferred Stock" is \$0.81 per share. The "Series A Preference Price" is the Original Purchase Price of the Series A Stock (as appropriately adjusted for stock splits, stock dividends on Series A Preferred Stock, stock combinations and stock reclassifications and the

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like), plus all declared and unpaid dividends with respect thereto, calculated at the time of a distribution made in accordance with section D.1(b) below.

(b) Distribution Upon Liquidation. In the event of any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the holders of the outstanding shares of Series A Preferred Stock shall be entitled to be paid out of the assets of this Corporation available for distribution to its stockholders, whether from capital, surplus or earnings, *pari passu* with any such payment made to holders of the Series B-C Preferred Stock, before any payment is made in respect of the outstanding shares of Common Stock, the Series A Preference Price. After distribution of the Series A Preference Price to the holders of the outstanding shares of Series A Preferred Stock, the holders of the outstanding shares of Common Stock shall be entitled to an amount per share equal to the Series A Preference Price paid to the holders of the outstanding shares of Series A Preferred Stock. Thereafter, any remaining assets of this Corporation shall be distributed pro rata among the holders of the outstanding shares of Common Stock and Series A Preferred Stock based on the number of shares of Common Stock into which outstanding shares of Series A Preferred Stock are convertible pursuant to this Certificate of Incorporation as of the date of distribution.

(c) Partial Payment. If, upon any liquidation, dissolution or winding up of this Corporation, whether voluntary or involuntary, the assets of this Corporation available for distribution to its stockholders shall be insufficient to pay the full Series A Preference Price required to be paid to the holders of the outstanding shares of Series A Preferred Stock plus the full Series B Preference Price and full Series C Preference Price required to be paid to the holders of the outstanding shares of Series B Preferred Stock and Series C Preferred Stock, respectively, then all of the assets of this Corporation legally available for distribution to the holders of equity securities shall be distributed ratably among the Series A Preferred Stockholders *pari passu* with the Series B-C Preferred Stockholders in proportion to the full amounts to which they would otherwise be respectively entitled. If liquidation preferences below the full Preference Price are to be paid, the holders of the outstanding shares of each Series of Preferred Stock shall each be paid the same liquidation preference amount per share as is paid to every other holder of that Series.

(d) Certain Transactions. The sale, transfer or other conveyance of all or substantially all of the assets of this Corporation, or the sale, transfer or other conveyance of a majority of the outstanding voting securities of this Corporation (on a fully diluted bases) in any transaction or related series of transactions whether by merger or consolidation or otherwise, shall not be deemed to be a liquidation, dissolution or winding up of the Corporation, as those terms are used in this Section of this Certificate of Incorporation, unless so elected to be treated as such by a majority of the Corporation's Board of Directors.

(e) Consent to Certain Distributions. Each holder of outstanding shares of Series A Preferred Stock, shall by virtue of its acceptance of a stock certificate evidencing such shares, be treated as having consented to distributions made by this Corporation for the repurchase of shares of Common Stock from directors or employees of, or consultants or advisers to, this Corporation upon the termination of employment by, or service to, this Corporation or any subsidiary of this Corporation or otherwise, if such repurchase is made in accordance with an agreement authorizing the right of said repurchase.

(f) Liquidation Adjustment. Notwithstanding anything to the contrary in this Certificate of Incorporation, each Preference Price shall be adjusted downwards upon the receipt by the holder of Preferred Stock of any non-cash dividends or distributions comprised solely of stock of any of this Corporation's subsidiaries (other than distributions of this Corporation's capital stock). Such adjustment shall be made by subtracting from the Preference Price the per share amount of the "cash value" of any such non-cash dividends or distributions made on the respective series of Preferred Stock at any time since the issuance of such series. The "cash value" shall be determined in good faith by this Corporation's Board of Directors in its sole discretion, or, if the distribution is a stock dividend (other than this Corporation's capital stock) whereby within one hundred and eighty (180) days after such distribution and prior to a "liquidating" event such company's stock is publicly traded, then the initial public offering price of such company's stock shall be the "cash value" whether or not the distributed stock is itself traded.

2. Conversion. The holders of the outstanding shares of Series A Preferred Stock shall have the conversion rights set forth below (the "Conversion Rights").

(a) Right to Convert. Upon (i) the closing of a firm underwritten public offering pursuant to an effective registration statement under the Securities Act of 1933, as amended, covering the offering and sale of shares of Common Stock for the account of the Corporation (other than a registration statement effected solely to implement an employee benefit plan, a transaction in which Rule 145 of the Securities and Exchange Commission is applicable or any other form or type of registration in which the shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock cannot be included pursuant to the Securities and Exchange Commission rules or practices) resulting in aggregate proceeds to the Corporation (before the payment of underwriting discounts and commissions and the expense of the offering) in excess of Ten Million Dollars (\$10,000,000); or (ii) a merger or consolidation with or into another corporation or a sale of all or substantially all of the Corporation's properties and assets in which the aggregate gross cash proceeds received by the Corporation is at least Ten Million Dollars (\$10,000,000) in cash or marketable securities, then the Board of Directors shall take all actions appropriate to convert each share of Series A Preferred Stock into Common Stock.

(b) Upon the occurrence of an event specified above, the outstanding shares of Series A Preferred Stock shall be converted into shares of Common Stock, whether or not the certificates representing such shares are surrendered to the Corporation or its transfer agent; provided, however, that the Corporation shall not be obligated to issue certificates evidencing the shares of Common Stock issuable upon such conversion unless the certificates evidencing such shares are either delivered to the Corporation or its transfer agent as provided below or the holder notifies the Corporation or its transfer agent that such certificates have been lost, stolen or destroyed and executes an agreement satisfactory to the Corporation indemnifying the Corporation from any loss incurred by it in connection with the issuance of such certificate. Upon the occurrence of such conversion of the outstanding shares of Series A Preferred Stock, the holders of the outstanding shares of Series A Preferred Stock shall surrender the certificates representing such shares at the office of the Corporation or to any transfer agent for the shares of Series A Preferred Stock or Common Stock. Thereupon, there shall be issued and delivered promptly to such holder, at such office and in its name as shown on such surrendered certificate

or certificates, a certificate or certificates for the number of shares of Common Stock into which the surrendered shares of Series A Preferred Stock of such holder were convertible on the date on which such conversion occurred, and the Corporation shall promptly pay in cash all declared but unpaid dividends on the shares of Series A Preferred Stock so converted.

(c) Price. Each share of Series A Preferred Stock, when converted, shall be converted into the number of shares of Common Stock that is equal to the quotient obtained by dividing (A) Eighty-One Cents (\$0.81) for each share of Series A Preferred Stock, by (B) the Series A conversion Price, immediately prior to the time of such conversion. The price at which shares of Common Stock shall be deliverable upon conversion of shares of Series A Preferred Stock shall be Eighty-One Cents (\$0.81) (as adjusted from time to time as herein provided, the "Series A Conversion Price").

(d) Mechanics of Conversion. At the occurrence of one of the events specified under Section 2(a) above, the Board of Directors shall, if necessary, take such action to ensure that the Certificate of Incorporation is amended to increase the number of authorized shares of Common Stock, which may include the convocation of a general meeting of stockholders. The Board of Directors shall thereafter adopt resolutions to effectuate the conversion of Series A Preferred Stock into Common Stock at the Series A Conversion Price, as adjusted from time to time. Thereafter, the holders of shares of Series A Preferred Stock shall have the right to receive new share certificates representing shares of Common Stock in accordance with the procedures as described under Section 2(b) above.

(e) Adjustment for Stock Splits and Combinations. If this Corporation at any time or from time to time after August 1, 1997, effects a division of the outstanding shares of Common Stock, then the Series A Conversion Price shall be proportionately decreased and, conversely, if this Corporation at any time, or from time to time, after August 1, 1997, combines the outstanding shares of Common Stock, then the Series A Conversion Price shall be proportionately increased. Any adjustment under this Section shall be effective on the close of business on the date such division or combination becomes effective.

(f) Adjustments for Other Dividends and Distributions. If this Corporation at any time or from time to time after August 1, 1997, fixes a record date for the determination of holders of shares of Common Stock entitled to receive a dividend or other distribution in the form of securities of this Corporation other than shares of Common Stock or rights or options for the purchase of, or securities convertible into, Common Stock, then in each such event provision shall be made so that the holders of outstanding shares of Series A Preferred Stock shall receive upon conversion thereof, in addition to the number of shares of Common Stock receivable thereupon, the amount of securities of this Corporation which they would have received had their respective shares of Series A Preferred Stock been converted into shares of Common Stock on the date one day before such event and had such holders thereafter, from the date of such event to and including the actual date of conversion of their shares, retained such securities, subject to all other adjustments called for during such period under this Section with respect to the rights of the holders of the outstanding shares of Series A Preferred Stock.

(g) Adjustment for Reclassification, Exchange and Substitution. If at any time or from time to time after August 1, 1997, the number of shares of Common Stock issuable upon conversion of the shares of Series A Preferred Stock, is changed into the same or a different number of shares of any other class or classes of Stock or other securities, whether by recapitalization, reclassification or otherwise (other than a recapitalization, division or combination of shares or a stock dividend, or a reorganization, merger, consolidation or sale of assets provided for elsewhere in this Section, then in any such event each holder of outstanding shares of Series A Preferred Stock shall have the right thereafter to convert such shares of Series A Preferred Stock into the same kind and amount of Stock and other securities receivable upon such recapitalization, reclassification or other change, as the maximum number of shares of Common Stock into which such shares of Series A Preferred Stock, could have been converted immediately prior to such recapitalization, reclassification or change, all subject to further adjustment as provided herein.

(h) Reorganizations, Mergers, Consolidations or Sales of Assets. If at any time or from time to time after August 1, 1997, there is a capital reorganization of the Common Stock (other than a recapitalization, division, combination, reclassification or exchange of shares provided for elsewhere in this Section or a merger or consolidation of this Corporation into or with another corporation or a sale of all or substantially all of this Corporation's properties and assets to any other person), then, as part of such capital reorganization, merger, consolidation or sale, provision shall be made so that the holders of outstanding shares of Series A Preferred Stock shall thereafter receive upon conversion thereof the number of shares of Stock or other securities or property of this Corporation, or of the successor corporation resulting from such merger or consolidation or sale, to which a holder of the number of shares of Common Stock into which their shares of Series A Preferred Stock were convertible would have been entitled on such capital reorganization, merger, consolidation or sale. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section with respect to the rights of the holders of the outstanding shares of Series A Preferred Stock after such capital reorganization, merger, consolidation, or sale. The provisions of this Section (including adjustment of the Series A Conversion Price and the number of shares into which the outstanding shares of Series A Preferred Stock may be converted) shall be applicable after that event and be as nearly equivalent to such Conversion Price and number of shares as may be practicable.

#### D. Provisions Applicable to Series B-C Preferred Stock

##### 1. Liquidation Rights.

(a) Preference Price. For purposes hereof, the Original Purchase Price of the Series B Preferred Stock is \$1.73 per share and the Original Purchase Price of the Series C Preferred Stock is the price per share paid by the initial purchasers of such Series C Preferred Stock in the initial offering thereof. The "Series B Preference Price" is the Original Purchase Price of the Series B Preferred Stock (as appropriately adjusted for stock splits, stock dividends on Series B Preferred Stock, stock combinations and stock reclassifications and the like), plus all declared and unpaid dividends with respect thereto, calculated at the time of a distribution made in accordance with section D.1(b) below. The "Series C Preference Price" is the Original Purchase Price of the Series C Preferred Stock (as appropriately adjusted for stock

splits, stock dividends on Series C Preferred Stock, stock combinations and stock reclassifications and the like), plus all declared and unpaid dividends with respect thereto, calculated at the time of a distribution made in accordance with section D.1(b) below.

(b) Distribution Upon Liquidation. In the event of the liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the Series B-C Preferred Stockholders will be entitled to receive out of the funds and other assets of the Corporation legally available for distribution to stockholders, for each share of the Series B-C Preferred Stock then held by them, *pari passu* with the holders of the Series A Preferred Stock, prior and in preference to any distribution to the Common Stockholders (i) in the case of the Series B Preferred Stockholders, the Series B Preference Price and (ii) in the case of the Series C Preferred Stockholders, the Series C Preference Price.

(c) Partial Payment. If upon the liquidation, dissolution or winding up of the Corporation, either voluntary or involuntary, the funds and other assets of the Corporation legally available for distribution among the Series A Preferred Stockholders and the Series B-C Preferred Stockholders are insufficient to permit the payment to such Stockholders of the full Series A Preference Price, Series B Preference Price and Series C Preference Price, respectively, then the entire funds and other assets of the Corporation legally available for distribution will be distributed in accordance with section D.1(b) above.

(d) A liquidation, dissolution or winding up for the purposes of this Section D.1 includes a sale of all or substantially all of the assets of the Corporation and a merger, consolidation or reorganization of the Corporation with or into any other corporation or other entity where the stockholders of the Corporation immediately prior to such event do not retain more than fifty percent (50%) voting interest in the successor corporation or entity (collectively, an "Asset Sale or Merger"), *provided, however*, that an Asset Sale or Merger shall not be deemed to be a liquidation if a majority of the holders of the Series B Preferred Stock and a majority of the holders of the Series C Preferred Stock, each such series voting as a separate class, vote to waive this provision.

2. Conversion Rights. The Series B-C Preferred Stockholders shall have conversion rights as follows (the "Conversion Rights"):

(a) Optional Conversion. Each of the Series B Preferred Stockholders and the Series C Preferred Stockholders may, at any time, and from time to time, convert any or all of such Stockholder's shares of Series B-C Preferred Stock into fully-paid and non-assessable shares of Common Stock at the conversion ratio set forth in section 2(c) below, as adjusted from time to time in accordance with the provisions of this section 2.

(b) Automatic Conversion. Each share of Series B-C Preferred Stock shall automatically be converted into shares of Common Stock immediately upon the closing of the Corporation's sale of its Common Stock in an underwritten firm commitment public offering registered under the Securities Act of 1933, as amended (other than a registration on Form S-8, Form S-4 or comparable forms), which results in aggregate cash proceeds (net of underwriter commissions and offering expenses) to the Corporation of not less than \$20,000,000 and which has a public offering price of not less than three (3) times the Original Purchase Price of the

Series C Preferred Stock per share (as appropriately adjusted for stock splits, stock dividends on the Series C Preferred Stock, stock combinations and stock reclassifications and the like). Each share of Series B Preferred Stock shall automatically be converted into shares of Common Stock immediately upon the vote or written consent of the holders of fifty-one percent (51%) of the outstanding shares of Series B Preferred Stock, voting as a single class. Each share of Series C Preferred Stock shall automatically be converted into shares of Common Stock immediately upon the vote or written consent of the holders of fifty-one percent (51%) of the outstanding shares of Series C Preferred Stock, voting as a single class.

(c) Conversion Ratio.

(i) Upon conversion, each share of Series B-C Preferred Stock shall be converted into the number of shares of Common Stock that results from dividing the Original Purchase Price for that series of Preferred Stock by its Conversion Price in effect at the time of conversion.

(ii) The initial Conversion Price for each series of the Series B-C Preferred Stock will be the Original Purchase Price for such series, so that prior to any adjustment from time to time under certain instances as hereinafter provided, each share of Series B-C Preferred Stock shall be convertible into one share of Common Stock.

(iii) In the case of optional conversion, before any holder of Series B-C Preferred Stock shall be entitled to convert the same into Common Stock, such holder shall surrender the certificates or certificates therefor (or an affidavit certifying that such certificates has been mutilated or apparently lost, destroyed or stolen along with an appropriate indemnity), duly endorsed, to the office of the Corporation or any transfer agent for such Series B-C Preferred Stock and shall give written notice to the Corporation at such office that it elects to convert the same. The Corporation shall, as soon as practicable thereafter, issue and deliver to such holder, or to its nominee or nominees, certificates for the number of full shares of Common Stock to which it shall be entitled, together with cash in lieu of any fraction of a share as hereinafter provided, and, if less than all of the shares represented by such certificates are converted, a certificate representing the shares of Series B-C Preferred Stock not converted. Such conversion shall be deemed to have been made as of the date of such surrender of the certificate for the stock to be converted, and the person or persons entitled to receive the Common Stock deliverable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock on such date. If the conversion is in connection with an offer of securities registered pursuant to the Securities Act of 1933, as amended, the conversion may, at the option of any holder tendering shares of Series B-C Preferred Stock for conversion, be conditioned upon the closing of the sale of securities pursuant to such offering, in which event the person(s) entitled to receive the Common Stock deliverable upon such conversion of the Series B-C Preferred Stock shall not be deemed to have converted such Series B-C Preferred Stock until effective with the closing of such sale of securities.

(iv) In the case of automatic conversion, on and after the related conversion event, notwithstanding that any certificate for such shares of Series B-C Preferred Stock subject to such conversion shall not have been surrendered for conversion, the shares of Series B-C Preferred Stock evidenced thereby shall be deemed to be no longer outstanding, and

all rights with respect thereto shall forthwith cease and terminate, except only the rights of the holder (A) to receive the shares of Common Stock to which such holder shall be entitled upon conversion thereof and to be deemed for all purposes as the record holder of such Common Stock as of the automatic conversion date, and (B) to receive the amount of cash payable in respect of any fractional share of Common Stock to which such holder shall be entitled.

(d) Adjustments to Conversion Price. The Conversion Price in effect from time to time shall be subject to adjustment in certain cases as follows:

(i) Adjustment for Subdivisions or Combinations of Common Stock.

In the event the Corporation at any time or from time to time after the effective date of the initial sale of Series B Preferred Stock (the "Original Issue Date") effects a stock split, stock dividend, reclassification, subdivision or combination of its outstanding Common Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of its outstanding Series B-C Preferred Stock, then the existing Conversion Price for the Series B Preferred Stock and for the Series C Preferred Stock, as the case may be, will be decreased or increased proportionately.

(ii) Adjustment for Subdivisions or Combinations of Preferred Stock.

In the event the Corporation at any time or from time to time after the Original Issue Date effects a stock split, stock dividend, reclassification, subdivision or combination of its outstanding Preferred Stock into a greater or lesser number of shares without a proportionate and corresponding subdivision or combination of its outstanding Common Stock, then the existing Conversion Price for the Series B Preferred Stock and for the Series C Preferred Stock, as the case may be, will be decreased or increased proportionately.

(iii) Adjustment for Dividends, Distributions and Common Stock

Equivalents. In the event the Corporation at any time or from time to time after the Original Issue Date makes or issues, or fixes a record date for the determination of holders of Common Stock (but not holders of Series B-C Preferred Stock) entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights, including options and warrants, convertible into, exchangeable for or entitling the holder thereof to acquire or receive additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration for such Common Stock Equivalents or the additional shares of Common Stock, for the purpose of protecting the Series B-C Preferred Stockholders from any dilution in connection therewith, then and in each such event the maximum number of shares (as set forth in the instrument relating thereto, the determination of such maximum being without regard to any provisions contained therein for a subsequent adjustment of such number) of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents will be deemed to be issued and outstanding as of the time of such issuance or, in the event such a record date has been fixed, as of the close of business on such record date. In each such event, the then existing Conversion Price for the Series B Preferred Stock and for the Series C Preferred Stock, as the case may be, will be decreased as of the time of such issuance or, in the event such a record date has been fixed, as of the close of business on such record date, by

multiplying the Conversion Price for the Series B Preferred Stock or for the Series C Preferred Stock, as the case may be, in each case by a fraction:

(A) the numerator of which will be the total number of shares of Common Stock and Common Stock Equivalents issued and outstanding immediately prior to the time of such issuance or the close of business on such record date; and

(B) the denominator of which will be the total number of shares of Common Stock and Common Stock Equivalents issued and outstanding immediately prior to the time of such issuance or the close of business on such record date plus the number of shares of Common Stock issuable in payment of such dividend or distribution or upon conversion or exercise of such Common Stock Equivalents; provided, however, if such record date has been fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed and such dividend is not fully paid or if such distribution is not fully made on the date fixed therefor, the Conversion Price for the Series B Preferred Stock and for the Series C Preferred Stock each will be recomputed accordingly as of the close of business on such record date and thereafter the Conversion Price for the Series B Preferred Stock and for the Series C Preferred Stock each will be adjusted pursuant to this section 2(d) as of the time of actual payment of such dividends or distribution.

(iv) Adjustments for Recapitalizations, etc. If at any time or from time to time there shall be a recapitalization, reorganization or reclassification of the Common Stock (other than a subdivision, combination or merger or a sale of assets transaction provided for elsewhere in this section 2(d)) or payment of a dividend or distribution (other than a cash dividend, or dividends and distributions as to which subparagraph (ii) of this section 2(d) applies), provision shall be made so that the Series B-C Preferred Stockholders shall thereafter be entitled to receive upon conversion of such Series B-C Preferred Stock the number of shares of stock or other securities or property of the Corporation or otherwise, to which it would have received had it converted its shares of Series B Preferred Stock or Series C Preferred Stock, as the case may be, into Common Stock immediately prior to such recapitalization, reorganization, reclassification, dividend or distribution. In any such case, appropriate adjustment shall be made in the application of the provisions of this section 2(d) with respect to the rights of the Series B-C Preferred Stockholders after the recapitalization, reorganization or reclassification to the end that the provisions of this section 2(d) (including adjustment of the Conversion Price then in effect and the number of shares purchasable upon conversion of shares of Series B-C Preferred Stock) shall be applicable after that event as nearly equivalent as may be practicable.

(v) Adjustments for Additional Shares Issued.

(A) If at any time after the Original Issue Date, the Corporation issues or sells any Additional Shares (as defined below) without consideration or for a consideration per share less than the Conversion Price for the Series B Preferred Stock or the Series C Preferred Stock, respectively in

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each such case as in effect on the date of and immediately prior to such issue, then and in each such case, the Conversion Price for the applicable series of Preferred Stock will be reduced to an amount (calculated to the nearest tenth of a cent) determined by multiplying such applicable Conversion Price by a fraction:

(1) the numerator of which will be the number of shares of Common Stock and Common Stock Equivalents outstanding immediately prior to such issue plus the number of shares of Common Stock which the aggregate consideration received by the Corporation for such issue would purchase at such applicable Conversion Price, and

(2) the denominator of which will be the number of shares of Common Stock and Common Stock Equivalents outstanding immediately after the Additional Shares proposed to be issued or sold are issued or sold; *provided that* such fraction will in no event be greater than one (1).

For purposes of this subsection (2)(d)(v), the shares of Common Stock issuable upon conversion of Series B-C Preferred Stock (and other shares of convertible preferred stock) will be included in both the numerator and denominator described above based on the number of shares of Common Stock issuable in exchange therefor without giving effect to this subsection 2(d)(v) (and comparable adjustments applicable to other shares of convertible preferred stock).

(B) For the purposes of any adjustment of a Conversion Price pursuant to this subsection 2(d)(v), the following provisions shall be applicable:

(1) In the case of the issuance of Additional Shares for cash, the consideration shall be deemed to be the amount of cash paid therefor without deducting any underwriting or similar discounts, commissions or other compensation paid, allowed or incurred by the Corporation in connection with the issuance and sale thereof.

(2) In the case of the issuance of Additional Shares for a consideration in whole or in part other than cash, the consideration other than cash shall be deemed to be the fair market value thereof as determined in good faith by the Board of Directors of the Corporation, *provided that* if, at the time of such determination, the Corporation's Common Stock is traded in the over-the-counter market or on a national securities exchange, such fair market value as determined by the Board of Directors of the Corporation shall not exceed the aggregate "Current Market Price" (as defined below) of the shares of Common Stock being issued.

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(3) In the case of the issuance of Additional Shares together with other stock or securities or other assets of the Corporation for a consideration which covers both, such consideration so received may be allocated to the Additional Shares on such basis as may be reasonably determined in good faith by the Board of Directors.

(4) The term "Additional Shares" shall mean shares of Common Stock and Common Stock Equivalents (other than Excluded Stock), *provided that* with respect to the latter:

a) the aggregate maximum number of shares of Common Stock deliverable upon exercise, conversion or exchange of such Common Stock Equivalents shall be deemed to have been issued at the time such Common Stock Equivalents were issued and for a consideration equal to the consideration (determined in the manner provided in subdivisions (1), (2) and (3) above), if any, received by the Corporation upon the issuance of such Common Stock Equivalents plus the minimum aggregate amount of additional consideration payable to the Corporation on exercise, conversion or exchange of such Common Stock Equivalents for the aggregate maximum number of shares of Common Stock covered thereby, and no further adjustment of the Conversion Price shall be made as a result of the actual issuance of shares of Common Stock on the exercise or conversion of any such Common Stock Equivalents;

b) on any change in the number of shares of Common Stock deliverable upon exercise, conversion or exchange of any Common Stock Equivalents, or on any change in the minimum purchase price of such Common Stock Equivalents, other than a change resulting from the antidilution provisions set forth in the instruments defining the rights thereof, the Conversion Price shall forthwith be readjusted to such Conversion Price as would have obtained had the adjustment made upon (x) the issuance of such Common Stock Equivalents not exercised, converted or exchanged prior to such change, as the case may be, been made upon the basis of such change or (y) the Common Stock Equivalents not exercised, converted or exchanged prior to such change, as the case may be, been made upon the basis of such change;

c) on the expiration of any such options or rights represented in any Common Stock Equivalents, the termination of any such rights to exercise, convert or exchange or the expiration of any options or rights related to such convertible or exchangeable securities, the Conversion Price shall forthwith be readjusted to such conversion price as would have obtained had the adjustment made upon the issuance of such Common Stock Equivalents been made upon the basis of the issuance of only the

number of shares of Common Stock actually issued upon the exercise, conversion or exchange of such Common Stock Equivalents.

(5) Notwithstanding anything in this subsection 2(d)(v) to the contrary, the Conversion Price shall not be adjusted upon the issuance by the Corporation of any of the following securities ("Excluded Stock"), which in each case are approved by the Board of Directors of the Corporation: (i) Compensatory Shares (including options permitting the purchase thereof) pursuant to stock purchase or stock option plans or similar arrangements; (ii) securities issued in connection with acquisitions, corporate partnering or strategic transactions; (iii) shares of Common Stock issued upon conversion of any shares of Series B-C Preferred Stock; (iv) shares issued in an underwritten firm commitment public offering in which the Series B-C Preferred Stock is converted into Common Stock; (v) securities issued in connection with stock dividends, splits, combinations, recapitalizations and similar events described in subparagraphs (i), (ii) or (iii) of this section 2(d); or (vi) shares of Common Stock or Common Stock Equivalents issued to any bank, financial institution, equipment lessor or similar financing sources in bona fide commercial credit arrangements, equipment financings and similar transactions primarily for non-equity capital raising purposes.

(6) For the purpose of any computation pursuant to this section 2(d), the "Current Market Price" at any date of one share of Common Stock shall be deemed to be the average of the last sale prices for the twenty (20) prior trading days on any public trading market for the Common Stock; *provided that* if the Common Stock is not traded on a public trading market, Current Market Price shall be determined in good faith by the Board of Directors.

(e) Certificate as to Adjustments. Upon the occurrence of each adjustment or readjustment of the Conversion Price pursuant to section 2(d) above, the Corporation, at its expense promptly shall compute such adjustment or readjustment in accordance with the terms hereof and prepare and furnish to each Series B-C Preferred Stockholder a certificate setting forth such adjustment or readjustment and showing in detail the facts upon which such adjustment or readjustment is based. The Corporation shall furnish or cause to be furnished to such Stockholder a certificate setting forth (i) such adjustment and readjustment, (ii) the current Conversion Price at the time in effect, and (iii) the number of shares of Common Stock and the amount, if any, of other property which at the time would be received upon the conversion of a share of Series B Preferred Stock or Series C Preferred Stock.

(f) Reservation of Stock Issuable Upon Conversion. The Corporation at all times will reserve and keep available out of its authorized but unissued shares of Common Stock solely for the purpose of effecting the conversion of the shares of Series B-C Preferred Stock such number of its shares of Common Stock as from time to time will be sufficient to

effect the conversion of all then outstanding shares of Series B-C Preferred Stock; and if at any time the number of authorized but unissued shares of Common Stock is not sufficient to effect the conversion of all then outstanding shares of Series B-C Preferred Stock, in addition to such other remedies as may be available to the Series B-C Preferred Stockholders for such failure, the Corporation will take such corporate action as, in the opinion of its counsel, may be necessary to increase its authorized but unissued shares of Common Stock to such number of shares as will be sufficient for such purpose.

### 3. Protective Provisions.

(a) The Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of over fifty percent (50%) of the then outstanding shares of Series B Preferred Stock and the holders of over fifty percent (50%) of the then outstanding shares of Series C Preferred Stock, each such series voting separately as a separate class:

(i) apply any of the Corporation's assets to the redemption, retirement, purchase or acquisition of any outstanding shares of Common Stock or Preferred Stock other than at par value except (i) pursuant to agreements that permit the Corporation to repurchase at cost Compensatory Stock upon the termination of employment, director or consulting services to the Corporation or (ii) in exercise of the Corporation's right of first refusal or similar right with respect to a proposed transfer of capital stock, pursuant to stock option, incentive stock option, and similar agreements approved by the Board;

(ii) pay or declare any dividend on the Common Stock (other than dividends payable solely in shares of capital stock of the Corporation);

(iii) issue securities to employees, officers or directors in excess of the number of such securities that have been reserved for such issuance as of the date of filing of this Amended and Restated Certificate, unless approved by a majority of the disinterested directors of the Corporation including the director elected by the Series B Preferred Stockholders and the director elected by the Series C Preferred Stockholders;

(iv) enter into any transactions, including loans, with any officer or director of the Corporation or to or with their affiliates or families, unless approved by a majority of the disinterested directors of the Corporation including the director elected by the Series B Preferred Stockholders and the director elected by the Series C Preferred Stockholders;

(v) take any action to voluntarily dissolve or liquidate the Corporation;

(b) Except as otherwise provided in these Articles or as may be required by law, so long as any shares of Series B Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of over fifty percent (50%) of the then outstanding shares of Series B Preferred Stock voting separately as a separate class:

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(i) amend, repeal, alter or change the rights, preferences or privileges of the shares of Series B Preferred Stock or increase or decrease the authorized number of Series B Shares;

(ii) authorize, create (by reclassifications or otherwise) or issue any new class or series of shares having rights, preferences or privileges senior to or on parity with the Series B Preferred Stock, *provided that* such approval shall not be required for the Company to issue its Series C Stock with the rights, preferences and privileges provided herein;

(iii) enter into any Asset Sale or Merger unless such transaction results in a distribution to the Series B Preferred Stockholders in an amount equal to at least three (3) times the Original Purchase Price paid by the Series B Preferred Stockholders, in cash or securities; or

(iv) enter into any agreement that would impair the Company's ability to perform its obligations under that certain Series B Preferred Stock Purchase Agreement among the Company and certain Series B Preferred Stockholders.

(c) Except as otherwise provided in these Articles or as may be required by law, so long as any shares of Series C Preferred Stock are outstanding, the Corporation shall not without first obtaining the approval (by vote or written consent, as provided by law) of the holders of over fifty percent (50%) of the then outstanding shares of Series C Preferred Stock voting separately as a separate class:

(i) amend, repeal, alter or change the rights, preferences or privileges of the shares of Series C Preferred Stock or increase or decrease the authorized number of Series C Shares;

(ii) authorize, create (by reclassifications or otherwise) or issue any new class or series of shares having rights, preferences or privileges senior to or on parity with the Series C Preferred Stock;

(iii) enter into any Asset Sale or Merger unless such transaction results in a distribution to the Series C Preferred Stockholders in an amount equal to at least three (3) times the Original Purchase Price paid by the Series C Preferred Stockholders, in cash or securities; or

(iv) enter into any agreement that would impair the Company's ability to perform its obligations under that certain Series C Preferred Stock Purchase Agreement among the Company, OffRoad Securities, Inc., and the Series C Preferred Stockholders.

4. Status of Converted Stock. In the event any shares of Preferred Stock shall be converted pursuant to section 2 hereof, the shares so converted shall be canceled and shall not be issuable by the Corporation. The Certificate of Incorporation of the Corporation shall be appropriately amended to effect the corresponding reduction in the Corporation's authorized capital stock.

## ARTICLE V

The Board of Directors of the Corporation is expressly authorized to make, alter or repeal Bylaws of the Corporation.

## ARTICLE VI

Elections of directors need not be by written ballot unless otherwise provided in the Bylaws of the Corporation.

## ARTICLE VII

A. To the fullest extent permitted by the Delaware General Corporation Law, as the same exists or as may hereafter be amended, a director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

B. The Corporation shall indemnify to the fullest extent permitted by law any person made or threatened to be made a party to an action or proceeding, whether criminal, civil, administrative or investigative, by reason of the fact that he or she, his or her testator or intestate is or was a director or officer of the Corporation or any predecessor of the Corporation, or serves or served at any other enterprise as a director or officer at the request of the Corporation or any predecessor to the Corporation.

Neither any amendment nor repeal of this Article VII, nor the adoption of any provision of the Corporation's Certificate of Incorporation inconsistent with this Article VII, shall eliminate or reduce the effect of this Article VII in respect of any matter occurring, or any action or proceeding accruing or arising or that, but for this Article VII, would accrue or arise, prior to such amendment, repeal or adoption of an inconsistent provision."

\* \* \*

The foregoing Amended and Restated Certificate of Incorporation has been duly adopted by this Corporation's Board of Directors and stockholders in accordance with the applicable provisions of Sections 228, 242 and 245 of the General Corporation Law of the State of Delaware. A majority of the outstanding shares of Common Stock and Preferred Stock approved this Amended and Restated Certificate of Incorporation by written consent in accordance with Section 228 of the General Corporation Law of the State of Delaware and written notice of such was given by the Corporation in accordance with said Section 228.

Executed at Berkeley, California on this 10 day of July, 2000.

/s/ Philip J. Gioia  
Philip J. Gioia  
President and Chief Executive Officer

COPY OF ORIGINAL  
ASSIGNMENT  
DO NOT RECORD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application:

NED HOFFMAN; DAVID FERRIN PARE, JR.;  
PHILIP DEAN LAPSLEY and  
JONATHAN ALEXANDER LEE

Serial No. 09/215,058

Filed: December 17, 1998

For: TOKENLESS FINANCIAL ACCESS SYSTEM

Box Assignment  
Commissioner of Patents and Trademarks  
Washington, D.C. 20231



I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL IN AN ENVELOPE ADDRESSED TO:

☒ COMMISSIONER OF PATENTS AND TRADEMARKS, WASHINGTON D.C. 20231

☐ ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON D.C. 20231

☐ ASSISTANT COMMISSIONER FOR TRADEMARKS, 2900 CRYSTAL DRIVE, ARLINGTON VA 22202-3513

ON: 14 Mar 2002  
*[Signature]*

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest: **VERISTAR CORPORATION**, a Delaware corporation, 155 Grand Avenue, Suite 1050, Oakland CA 94612
2. Name and address of party(ies) receiving an interest: **INDIVOS CORPORATION**, a Delaware corporation, 155 Grand Avenue, Suite 1050, Oakland CA 94612
3. Description of the interest conveyed: Name Change

Date of execution of attached document: August 15, 2001

4. Application number: 09/215,058 Additional sheet attached? No
5. Name and address of party to whom correspondence concerning document should be mailed:

Alexander C. Johnson, Jr.  
MARGER JOHNSON & McCOLLOM, P.C.  
1030 S.W. Morrison Street  
Portland, Oregon 97205

Telephone: (503) 222-3613

6. Number of applications and patents involved: 1
7. Attached is PTO Form 2038 authorizing credit card payment of \$40 recordal fee.
8. Any deficiency or overpayment should be charged or credited to deposit account number 13-1703.
9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Respectfully submitted,

MARGER JOHNSON & McCOLLOM, P.C.

Dated: 14 Mar 2002

By

*[Signature]*  
Alexander C. Johnson, Jr.  
Registration No. 29,396

MARGER JOHNSON & McCOLLOM, P.C.  
1030 S.W. Morrison Street  
Portland, Oregon 97205  
Telephone: (503) 222-3613

cc: Michael J. Biber, Esq.

Total number of pages comprising cover sheet and attached assignment: 3

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State of Delaware

## Office of the Secretary of State

PAGE 1

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "VERISTAR CORPORATION", CHANGING ITS NAME FROM "VERISTAR CORPORATION" TO "INDIVOS CORPORATION", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF AUGUST, A.D. 2001, AT 9 O'CLOCK A.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

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ASSIGNMENT  
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*Harriet Smith Windsor*  
Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 1298842

DATE: 08-16-01

CERTIFICATE OF AMENDMENT  
OF  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
VERISTAR CORPORATION


VeriStar Corporation, a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

I. The amendment to the Corporation's Amended and Restated Certificate of Incorporation set forth below has been adopted by the board of directors in accordance with the provisions of section 242 of the General Corporation Law of the State of Delaware.

II. Article I of the Corporation's Amended and Restated Certificate of Incorporation is amended to read in its entirety as follows:

"The name of this corporation is Indivox Corporation (the "Corporation")."

IN WITNESS WHEREOF, VeriStar Corporation has caused this Certificate to be signed by Philip J. Gioia, its Chief Executive Officer, and Michael J. Biber, its Secretary, this 15th day of August, 2001.

  
Philip J. Gioia, Chief Executive Officer

  
Michael J. Biber, Secretary

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STATE OF DELAWARE  
SECRETARY OF STATE  
DIVISION OF CORPORATIONS  
FILED 09:00 AM 08/15/2001  
010402321 - 2731001

corporation record/indivox 08/15/01